

MHTC Contract Submittal FormThis form should travel with the contracts. **(Cover letter and emails unnecessary.)****Note to Districts:** Please route through respective Division for execution by management in Central Office.Date: 10-4-11 To: Adam Brown - cc From: Kathy Harvey - deDate: 10-4-11 To: Kevin Keith - do From: A. Brown - ccc

Date: _____ To: _____ From: _____

Date: 10-7-11 To: Kathy Harvey - DE From: Dana Kawai - CS

Date: _____ To: _____ From: _____

Type of Agreement: MOUContract With Whom: National Park Service and the Federal Highway Administration

Job/Project

Number: _____

Route: I-70County: St. Louis

Contract

Amount _____

I. Specific MHTC Authority: Was this agreement approved by specific Commission action?Yes ☐ No ☒

If Yes, date approved _____

If you answered "yes" to this question, skip remaining questions. Attach to contracts for submittal.

II. Delegation of Authority Policy:To view the policy, go to Intranet, Commission, Policies – Execution of Documents Policy**III. Delegation Letter:**

Attach delegation letter if someone other than individuals listed in A3 of the policy will be signing the contract.

Check and complete the lettered section below (only one), which cites the authority for execution of this document.☒ B. Statewide Transportation Improvement Program (STIP)
Type of Contract: 5. Environmental Approvals☐ C. Operating Budget
Type of Contract: Click Arrow for Options☐ D. Funds Transfers and Reimbursement Agreements
Type of Contract: Click Arrow for Options☐ E. Conveyance of Commission Assets
Type of Contract: Click Arrow for Options☐ F. Commission Use of Private and Other Public Assets
Type of Contract: Click Arrow for Options☐ G. Operations
Type of Contract: Click Arrow for Options☐ H. Administrative Settlements
Type of Contract: Click Arrow for Options**COMMENTS/SPECIAL INSTRUCTIONS:** Please return to Kathy Harvey once fully executed.

Memorandum of Understanding

**Between the National Park Service,
the Federal Highway Administration and the Missouri Department of Transportation**

I. CONTEXT

As called for in the Jefferson National Expansion Memorial (the park) General Management Plan (November 2009), an international design competition was conducted in 2010 to revitalize the park by improving connections to downtown St. Louis and expanding programming, facilities and partnerships, while enhancing the visitor experience. The CityArchRiver 2015 (CAR 2015) design competition began in December 2009 and the winning team and design was selected in September 2010. Since that time, the design team has been refining their concepts and preparing more detailed designs.

Several components of the proposed CAR 2015 design would be considered major federal actions (i.e., they are subject to federal control and responsibility) within the jurisdiction of either the National Park Service (NPS) or the Federal Highway Administration (FHWA). As major federal actions, these components are subject to the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq), and each agency is preparing a NEPA document for those project components for which they have jurisdiction, as described in section III.

Because NPS and FHWA are simultaneously preparing NEPA documents which address project components within their jurisdiction, each agency has requested the participation of the other as a cooperating agency. In addition, recognizing their special expertise, the NPS has invited the Missouri Highways and Transportation Commission, acting by and through the Missouri Department of Transportation (MoDOT), as a cooperating agency for their NEPA document. Cooperating agency participation is intended to enable effective communication among government entities and provide relevant information to be used in the forthcoming decisions.

II. PURPOSE

As established in the Council on Environmental Quality (CEQ) regulations, 40 C.F.R. Part 1500-1508, Executive Order 13352 on cooperative conservation, and the Department of the Interior (DOI) NEPA regulations (43 C.F.R. §§ 46.225, 46.330), Interior bureaus will cooperate with all cooperating agencies that have jurisdiction by law or special expertise to the "fullest extent possible." As the chair of CEQ emphasizes, "cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes authority of any agency involved in the NEPA process" and "whether to invite, accept or end cooperating agency status" should be determined on a case-by-case basis considering all relevant information and factors." (January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies).

When entering into cooperating agency agreements, either as the lead or as the cooperator, DOI NEPA regulations encourage bureaus to develop and adopt a memorandum of understanding (MOU) that includes respective roles and responsibilities (46 CFR §225(d)). The purpose of this MOU is to:

- Formally identify the NPS and FHWA as the lead for NEPA documents addressing project components for which they have jurisdiction;

- Describe the general roles and responsibilities of each party, including MoDOT, as either the lead agency or a cooperating agency;
- Provide a framework for cooperation and coordination between the parties to successfully complete the NEPA process in a timely, efficient and thorough manner; and
- Ensure that the working relationship between the Parties meets the purposes and intent of NEPA.

III. JURISDICTION AND AUTHORITIES

It is understood that each party continues to exercise its respective jurisdictional authorities and that the cooperation extended by this MOU does not transfer any jurisdictional roles or responsibilities. It is mutually understood by all parties that, for this case, NPS and FHWA has jurisdiction by law (e.g., authority to approve implementing actions) of particular CAR2015 project components. By signing this MOU, NPS and FHWA, as lead agencies on their respective NEPA documents, agree to evaluate the impacts of the proposed components within their jurisdiction, and any alternatives identified through the planning process, as summarized in the following table.

Project Component	Jurisdiction/Lead
Renovation of the underground museum, museum expansion and a new entrance	NPS
Accessibility improvements and new exhibits in the Old Courthouse	NPS
Development of accessible trails to the riverfront	NPS
Improvements to the sustainability of the landscape at the park	NPS
Closure of the Washington Avenue Spur and the removal of the Arch garage	NPS
Construction of a landscaped "lid" over the depressed lanes of I-70 between the Gateway Arch grounds and downtown	FHWA
Remove Memorial Drive northbound from Walnut Street to the new Washington Street Ramps and southbound between Chestnut and Market Streets	FHWA
Changes to the ramp system of I-70 at Washington Avenue and Biddle Street;	FHWA
Extension of North 3rd Street to connect with I-70 Westbound at the Martin Luther King Bridge	FHWA
The possible expansion of I-70 Westbound On-ramp at Biddle Street	FHWA

This MOU is based on and consistent with authorities of each agency, as follows:

- National Environmental Policy Act (NEPA), at 42 U.S.C. § 4321 *et seq.*, as further elaborated by the CEQ regulations at 40 CFR §§ 1501.5 and 1501.6 and DOI regulations at 43 CFR §§ 46.220, 46.225, and 46.230.
- The National Park Service Organic Act, 16 U.S.C. § 1 *et seq*
- General Authorities Act, 16 U.S.C. § 1a-1 *et seq*
- Executive Order Establishing the Jefferson National Expansion Memorial, E.O. 7253
- Jefferson National Expansion Memorial Authorization, 16 U.S.C § 450jj , as amended.
- 23 CFR 771.119 – Preparing an EA
- 23 CFR 771.121 – Preparing a FONSI
- 40 CFR 1508.5 – Cooperating Agency

IV. RESPECTIVE ROLES AND RESPONSIBILITIES

In addition to the context, purpose, and jurisdiction and authorities outlined above, the NPS, FHWA, and MoDOT agree to the following regarding their roles and responsibilities as lead or cooperating agencies.

A. LEAD AGENCIES: Under this MOU, Lead Agencies (i.e., NPS and FHWA) will:

- Prepare the internal and public review versions of the NEPA documents and be responsible for the quality and content of these documents. The lead agency will be solely responsible for selecting the preferred alternative for their respective NEPA document.
- Exercise sole decision making authority on a Finding of No Significant Impact (FONSI); Notice of Intent (NOI) to prepare an environmental impact statement; or Record of Decision as appropriate.
- Seek meaningful input from cooperating agencies, non-governmental stakeholder groups, and the general public primarily at key moments in the NEPA process, including: during scoping, when issues and alternatives to be addressed in the NEPA document are identified; during the development of the range of alternatives that will be analyzed; and during review of the public NEPA documents.
- Keep all parties --primarily via telephone --informed about the timeframes for public scoping, public comments and alternatives under consideration.
- Hold joint cooperating agency meetings as deemed necessary.
- Incorporate in the NEPA document, to the extent possible, the comments, recommendations and/or data submitted by the cooperating agency within their area of expertise.
- Let cooperating agencies know specifically how and where cooperating agency data, information, or input was incorporated into, or considered in, the NEPA document, and how it may have influenced decisions similar to how non-governmental stakeholder groups and the general public comments are addressed and information incorporated or changed.
- Inform the cooperating agencies of the potential direct, indirect, and cumulative impacts of the proposed action and a reasonable range of alternatives as well as potential means to mitigate those impacts.
- In the NEPA document, identify the cooperating agencies and acknowledge the roles and responsibilities of each cooperating agency.
- Allow the appropriate cooperating agencies to review analysis relevant to the information provided by that cooperating agency, and give meaningful consideration to comments submitted by the involved cooperating agencies so that relevant information can be incorporated or changed in the document before it becomes a public document.

- Solicit and accept public comment, and draft responses thereto for inclusion in the decision document. Any public comment received by a cooperating agency will be forwarded to the lead agency for consideration in preparing the final documentation.
- Share substantive public comments with the cooperating agency pertinent to that agency's areas of expertise, if requested by the cooperating agency, or if the lead agency believes the agency can assist in responding to the comment.
- Provide information upon request to be included in a decision file for the preparation of the NEPA documents.

B. COOPERATING AGENCIES: Under this MOU, Cooperating Agencies (i.e., NPS, FHWA, and MoDOT) will:

- Cooperate in the preparation of the NEPA document. This will be accomplished primarily through information exchange and participation in Core Team and/or Interdisciplinary Team Meetings regarding the NEPA document. During these meetings (telephone conference or face-to-face) the Parties will provide direction and guidance needed to prepare written materials.
- Provide technical assistance in those areas for which the cooperating agency has identified and recognized expertise. Participate in discussions about data assessment and technical reports, and provide technical expertise in order to assist in evaluating the potential impacts and mitigation effectiveness in the NEPA document.
- If appropriate, and within their expertise, provide written evaluations of the effects of implementing each alternative; and carry out any other tasks necessary for the development of the environmental analysis and documentation.
- Review internal drafts of the NEPA document and comment on potential impacts regarding the agencies' area of expertise. The reviews will be within the context and scope of NEPA and related legislation and will be limited to the proposed action and its alternatives. The cooperating agency will provide comments on drafts within mutually agreed upon timeframes.

V. MUTUALLY UNDERSTOOD AND AGREED BY ALL PARTIES

- All parties commit to maintaining the confidentiality of documents and deliberations during the period prior to the public release by the lead agency of any NEPA document.
- The parties agree that the target date for completing NEPA documentation is January 2012, but the date is subject to change based on the ongoing design process for the project components listed in Section III, and any alternatives identified during the planning process.
- The Parties will participate in this planning process in good faith and make every effort to resolve any perceived areas of conflict. The agencies agree to fully explore issues before coming to conclusions, and to commit to searching for opportunities for resolution to contribute to an effective NEPA document.
- The Parties agree not to employ for this project the services of any contractor having a financial interest in the outcome of either agencies' NEPA document. The Parties will take all necessary

steps to ensure that no conflict of interest exists with any consultants, counsel, or representatives they may employ.

- All parties recognize this MOU is to define the working relationships between the parties. It does not infer any contractual relationship, nor assumption of liability for any action of the other parties.
- Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the MOU. Any specific cost sharing or funding shall be executed separately through other funding mechanisms, as deemed necessary and appropriate by each of the signatories.

VI. STANDARD CONDITIONS:

A. AUTHORITIES. Nothing in this MOU shall be construed to extend the jurisdiction or decisionmaking authority of any party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU shall be construed as limiting or affecting the authority or legal responsibility of any party, or as binding any party to perform beyond the respective authority of each, or to require any party to assume or expend any specific sum of money. The provisions of this MOU are subject to the laws and regulations of the state of Missouri, the laws of the United States; the regulations of the Department of the Interior, and the regulations of the Department of Transportation, as they may be applicable. Nothing in this MOU shall be construed as affecting the decision-making requirements of any party or impairing the independent judgment of each party regarding policy decisions. Each Party retains its own responsibility and authority for a decision document, and for the results of that decision.

B. LEGAL RIGHTS AND REMEDIES. Nothing in this MOU shall be construed to alter the legal rights and remedies that each party would otherwise have. No party waives any legal rights or defenses by entering into this MOU or participating in the process contemplated hereby.

C. SOVEREIGN IMMUNITY. The State of Missouri, political subdivisions, and the agencies of the federal government do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. SEVERABILITY. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any party may renegotiate the terms affected by the severance.

E. THIRD PARTY BENEFICIARY RIGHTS. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed to create such status. The rights, duties and obligations contained in this MOU shall operate only among the parties to this MOU, and shall insure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties with their obligations under this MOU.

F. NON-FUND OBLIGATION DOCUMENT. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws,

regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate rules, policies, and statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the MOU. Any specific cost sharing or funding shall be executed separately, as deemed necessary and appropriate by each of the signatories.

G. PARTICIPATION IN SIMILAR ACTIVITIES WITH OTHER ENTITIES. This MOU in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.

VII. EFFECTIVE DATE, AMENDMENT, AND TERMINATION

This Agreement is executed as of the date of the last signature and is effective through April 2012, at which time it will expire unless extended by a modification signed and dated by all properly authorized signatory officials.

Any Party may request changes in this Agreement. Any changes, modifications or amendments to this Agreement which are mutually agreed upon by and among the Parties to this Agreement shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

Any of the Parties may terminate its participation in this Agreement upon thirty (30) days written notice to the other Party. The written notice shall state the reason for desiring to terminate the Agreement. During the intervening thirty (30) days, all parties hereto agree to actively attempt to resolve any outstanding disputes or disagreements.

VIII. PRIMARY CONTACTS FOR THIS MOU

The point of contact for each party to this Agreement is:

NPS – Mr. Tom Bradley, Superintendent, Jefferson National Expansion Memorial, (314) 655-1611

and

FHWA - Mr. Kevin Ward, Division Administrator, Federal Highway Administration, (304) 535-4003

and

MoDOT - Mr. Kevin Keith, Director, (573) 751-3692


IX. APPROVALS

NATIONAL PARK SERVICE



Superintendent
Jefferson National Expansion Memorial
8/25/11
Date

FEDERAL HIGHWAY ADMINISTRATION



Division Administrator
Federal Highway Administration
9/30/11
Date


MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By  _____
Director Kevin Keith
10-7-11
Date

Attest:


By _____
Secretary to the Commission
10/7/11
Date

Approved as to Form:

By  _____
Commission Counsel
10/4/11
Date